(6)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR(CHHATTISGARH)

W.P. NO. 670 /2001

PETITIONER

Manoj Kumar Mukherjee,
S/o. Fanindra Nath Mukherjee,
Aged about 55 years,
Resident of Tahsilpara,
Kondagaon,
Dist. Bastar (C.G.)

Vs.

RESPONDENTS

1. District Co-operative Central Bank Limited,
Jagdalpur,
Dist. Bastar (C.G.)

2. Dy. Registrar,
Co-operative Societies,
Jagdalpur,
Dist. Bastar (C.G.)

3. Joint Registrar,
Co-operative Societies,
Bastar Division,
Jagdalpur,
Dist. Bastar (C.G.)

P.R. No. 825/01
Presented by Shri ...
dated 31.5.01

PETITION UNDER ARTICLE 226/227 OF CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE NATURE OF CERTIORARI, MANDAMUS, PROHIBITION AND FOR OTHER WRIT OR WRITS, DIRECTION OR DIRECTIONS, ORDER OR ORDERS.

A33

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

DIVISION BENCH

CORAM : **HON'BLE SHRI H.L. DATTU, CJ.**
HON'BLE SHRI V.K. SHRIVASTAVA, J.

W.P. NO.870 OF 2001

PETITIONER		Manoj Kumar Mukherjee

Versus

RESPONDENTS		District Co-operative Central Bank Limited, Jagdalpur and others.

Present : Smt. Smita Ghai, counsel for the petitioner.
Shri Prafull Bharat, counsel for the respondent No.1.
Shri Prashant Mishra, Additional Advocate General with Shri Sumesh Bajaj, Govt. Advocate for the State/respondents No. 2 & 3.

ORAL ORDER
(Passed on 15th February, 2007)

The following oral order of the Court was passed by **H.L. Dattu, CJ.**

This writ petition is filed against the order passed by the M.P. State Co-operative Tribunal, Bhopal in Second Appeal No. 291 of 1999. By the impugned order, the Tribunal has allowed the appeal filed by the respondents-Bank and has set-aside the order passed by the First Appellate Authority and also the order passed by the Deputy Registrar of Co-operative Societies.

(2) The facts in brief are :

The petitioner joined the services of the first respondent-District Co-operative Central Bank Limited ('Bank' for short) sometime in the year 1965. While he was working as Branch Manager at Dantewada Branch of respondent – Bank, he was kept under suspension by an

order dated 10-3-1986 pending departmental enquiry. Thereafter, a charge memo was issued to the petitioner on 29-11-1986. In the said charge memo, serious allegations were made against the petitioner including serious irregularities said to have been committed by him in distribution of the loans to the customers. After receipt of the charge memo, the petitioner had submitted his reply on 12-12-1986. Not being satisfied with the reply filed by the delinquent officer, the disciplinary authority of the bank had appointed an enquiry officer to enquire into the charges alleged in the charge memo.

(3) The enquiry officer after completion of the enquiry proceedings had submitted the enquiry report to the Disciplinary Authority and in that had concluded that the delinquent officer is guilty of the charges alleged in the charge memo. After receipt of the report of the enquiry officer and the records of the enquiry proceedings, the Disciplinary Authority had issued a show-cause notice along with the report of the enquiry officer inter alia directing him to show cause. After receipt of the reply filed by the delinquent officer, the Disciplinary Authority has passed an order dated 27-7-1997 dismissing the delinquent officer from the services of the Bank.

(4) The petitioner instead of raising a dispute as provided under the provisions of M.P. State Co-operative Societies Act, had filed Writ Petition No.2619 of 1987 before this Court, inter alia questioning the order of dismissal passed by the Disciplinary Authority of the Bank. The said petition was disposed of on 17-11-1988, with a direction to the petitioner to raise the dispute before the competent authority within one month from the date of Court's order. For the reasons best known to

the petitioner, he did not raise the dispute within the time granted by the Court.

(5) Sometime in the month of July 1989, the petitioner raised the dispute before the Deputy Registrar Co-operative Societies. The Deputy Registrar Co-operative Societies has allowed the dispute raised by the petitioner and thereby has set-aside the order passed by the Disciplinary Authority. An appeal came to be filed by the Bank against the order passed by the Deputy Registrar before the Joint Registrar Co-operative Society. The said authority rejected the appeal filed by the Bank by its order dated 28-7-1997. Thereafter, the Bank had preferred the Second Appeal before the M.P. State Co-operative Tribunal, Bhopal. The Tribunal by its order dated 22-02-2000 has allowed the appeal filed by the Bank and thereby has set-aside the order passed by the Deputy Registrar as well as the Joint Registrar Co-operative Societies.

(6) The petitioner being aggrieved by the order passed by the Tribunal is before us in this petition filed under Article 227 of the Constitution.

(7) Smt. Smita Ghai, learned counsel appearing for the petitioner would urge only three grounds at the time of hearing the petition. Firstly, that the order passed by the Disciplinary Authority is vitiated, since the enquiry officer/disciplinary authority had not supplied the copies of the documents based on which charges were framed against the delinquent officer in spite of repeated representations filed by the delinquent officer and therefore the entire proceedings are in violation of principles of natural justice. Secondly, the non-supply of copy of the

report of the enquiry officer along with the second show cause notice by the disciplinary authority has vitiated enquiry proceedings. Thirdly, the order passed is in violation of Rule 61 (5) of the Madhya Pradesh Ke Jila Sahkari Kendriya Bank Karmachari Seva (Niyojan Nibandhan Tatha Unaki Karyasthiti) Niyam 1982.

(8) In reply to the submission made by the learned counsel for the petitioner, the learned counsel appearing for the respondent-Bank would submit, that the petitioner at no point of time had requested the Disciplinary Authority for supply of any documents based on which the Disciplinary Authority had issued a charge memo and therefore, it cannot be said that the enquiry proceedings are in violation of principles of natural justice. It is further argued by the learned counsel that the petitioner had filed his detailed reply to the charge memo issued and in that also had not asked for supply of any documents to him to effectively reply to the charge memo.

(9) With regard to the first ground, as noticed above, the charge memo was issued to the delinquent officer and in that he was called upon to submit a reply. It appears that he had filed a detailed reply, but no ground was taken that he would not be in a position to effectively reply to the charge memo without the supply of the documents on which reliance was placed by the disciplinary authority while framing charges. It is now well settled that the doctrine of principle of natural justice cannot be applied in a straitjacket formula. To sustain the complaint of violation of principle of natural justice, one must establish that he has been prejudiced by non-observance of principle of natural justice. In the instant case, the petitioner nor his learned counsel has not been

able to show how he has been prejudiced by non-furnishing of documents. As we have already noticed, the petitioner had filed a detailed reply to the charge memo issued by the disciplinary authority. He has participated in the enquiry proceedings before the enquiry officer. He has been heard by the enquiry officer and also by the disciplinary authority. Therefore, it is not one of those cases where it could be said non-supply of documents has caused any prejudice to the delinquent officer. Therefore, the first ground urged by learned counsel for the petitioner has no merit and accordingly it is rejected.

(10) The learned counsel for the petitioner would contend that the copy of the enquiry report has not been furnished to the delinquent officer along with the second show cause notice and thereby there is violation of principles of natural justice. In aid of his submission, the learned counsel has placed reliance on the observations made by the Apex Court in the case of Union of **India and others vs. Mohd. Ramzan Khan, (1991) 1 SCC 588.** *Per contra*, learned counsel for the respondents would submit that the petitioner has failed to prove that the non-supply of copy of the enquiry report has prejudiced his case in any manner whatsoever and that apart the principles laid down in Mohd. Ramzan Khan's case has no bearing in the facts and circumstances or the present case, since the order that was passed by the disciplinary authority was much earlier to the principles laid down by the Apex Court in Mohd. Ramzan Khan's case. In support of this contention, the learned counsel has placed reliance on the observations made by the Apex Court in the case of **P.D.Agarwal vs. State Bank of India and others, (2006) 8 SCC 776.**

(11) Admittedly, in the instant case the order of dismissal from service was passed by the disciplinary authority in the year 1987. The decision that was rendered in Mohd. Ramzan Khan's case was sometime in the year 1991. The Apex Court in P.D.Agarwal's case has observed that the law declared in Mohd, Ramzan Khan's case is applicable only to the departmental enquiries made after 1991. That apart, the petitioner's learned counsel is not able to show, how the petitioner was prejudiced by non-supply of copy of the report of the enquiry officer. To sustain the compliant of violation of principles of natural justice, the petitioner must establish that he has been prejudiced by non-supply of the enquiry report. In view of this conclusion of ours, the second ground urged by the petitioner's learned counsel has no merit and accordingly it is rejected.

(12) Coming to the third issue, in our opinion here is a case where the disciplinary authority had lodged a complaint before the police authority more or less on the same allegations made in the charge memo. The Jurisdictional Magistrate has acquitted the petitioner by giving the benefit of doubt. This order was made in the year 1993 and the order of dismissal was passed in the year 1997 that is much earlier to the order passed by the learned Magistrate. Therefore, the provisions of Rule 61(5) of the Rules cannot be applied in the facts and circumstances of the case. Even otherwise also, the order passed by the Jurisdictional Magistrate is on the ground that the prosecution has failed to prove the case and it is not the order made on the merits of the case. Therefore, the provisions of Rule 61 (5) cannot be said to be violated. These are the only three grounds canvassed at the time of

hearing by learned counsel for the petitioner. Since we have negatived all the contentions, the petition requires to be rejected and accordingly it is rejected. No order as to costs. Ordered accordingly.

Sd/-
Chief Justice

Sd/-
V.K. Shrivastava
Judge